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Q15

Which steps are required for constitutionalization of a commission? Do you think imparting constitutionality to the National Commission for Women would ensure greater gender justice and empowerment in India? Give reasons.

UPSC Civil Services Mains 2020 · GS II · 15 marks · Indian Constitution

Indian Constitution - historical underpinnings, evolution, features, amendments, significant provisions and basic structure.

Core demand of the question

- Which steps are required for constitutionalization of a Commission? Do you think imparting constitutionality to the **National Commission** for Women would ensure greater gender justice and empowerment in India? Give reasons
- Honour the official stem. Contrast constitutional bodies (EC, UPSC, NCSC/NCST/NCBC) with statutory NCW
- Keep the answer within a 15-mark length

Revision summary

Constitutionalization needs an **Article 368** amendment, tenure, charge on the Fund, mandate, and transition from the statute.

Models are EC, UPSC, NCSC, NCST and NCBC, not a renamed ministry cell.

NCW is statutory (1990); raising it to constitutional rank improves permanence and signalling.

Constitutional SC/ST commissions show that status does not ensure justice on the ground.

Gender justice still needs FIRs, economic rights and political reservation; NCW can aid, not ensure.

Introduction

Constitutionalization means writing a commission into the Constitution so that its existence, core functions, and insulation do not depend on an ordinary statute the government of the day can dilute. The **National Commission** for Women is a statutory body under the **NCW Act, 1990**. A constitutional NCW would raise status; it would not by itself guarantee gender justice.

Body

Steps required to constitutionalize a commission

- A constitutional amendment under **Article 368**, with the ratification map that the subject requires if it touches federal or Chapter-I Fourth-Schedule-type balances - in practice, a new Part or Articles on the model of the **Election Commission (Article 324)**, UPSC (315-323), or the **National Commissions** for SCs, STs and BCs (338, 338A, 338B).
- Entrench composition, qualifications, term, removal (as nearly as possible to a Supreme Court judge or as specified), and a charge on the Consolidated Fund so salary is not a ministry file.

- **Write the mandate:** inquire, summon, recommend, and, if intended, give limited civil-court powers; name the reports to the President and Parliament so they must be tabled.
- Clarify relation to State commissions and to the Union executive, or the new body will fight turf with ministries and with NCSC/NCST on overlapping atrocities.
- **Transitional clause:** repeal or save the parent statute, transfer pending inquiries, and protect incumbents for a defined period.
- **Political step before legal step:** all-party support, or a 'constitutional' commission born of a thin majority will be as contested as a statute.

What constitutionality actually buys

- Harder abolition and a public signal of permanence, which matters for a women's commission that every budget can starve.
- Stronger convention of consulting it on Bills that touch the family, labour, and criminal law.
- Better chance of comparable rank with NHRC and the national 'caste' commissions in inter-institutional fights.

Would a constitutional NCW ensure greater gender justice?

- No, not by the text alone. Gender justice needs police filing of FIR, courts, property and labour rights, and budgets for childcare and health - none of which appear by inserting NCW into the Constitution.
- NCSC and NCST are constitutional, yet atrocities and under-representation persist; the lesson is status without street-level enforcement.
- NCW's present limits are more about recommendatory teeth, vacancies, political appointments, and a tiny investigative arm than about missing Article numbers.
- Empowerment of women also runs through the 73rd Amendment's reserved chairs, the still-pending national women's reservation in legislatures (as of 2020), SHGs, and labour codes - parallel tracks a commission does not own.
- A constitutional NCW could still be captured by patronage; removal safeguards help, they do not choose feminists for the chair.

Reasons a constitutional NCW is still worth doing - with humility

- **Symbol and shield:** women's equality is a Preamble and **Article 15** project; matching institutional rank to that claim is coherent.
- Reports with a duty to table create a parliamentary hook that a quiet statutory annual report lacks.
- Combined with binding timelines for government ATR, a specialised bench practice on violence, and State women's commissions of similar strength, constitutionality becomes one brick.
- **Recommendation:** constitutionalize, give limited inquiry powers on violence and workplace complaints in aid of police and POSH, and keep the body from becoming a substitute for elected gender politics.

Flow diagram

Art 368 amendment -> Entrenched tenure fund mandate
Entrenched tenure fund mandate -> Constitutional commission
Constitutional commission -> Status and tabling
Police courts budgets representation -> Gender justice
Status and tabling -> Gender justice

Conclusion

Constitutionalizing a commission takes an amendment, entrenched tenure and money, a written mandate, and a clean join to existing bodies. A constitutional NCW would help status and reporting; it would not ensure gender justice or empowerment by itself. Those still depend on criminal process, economic rights, and political representation that no commission, however titled, can deliver alone.

Facts & figures

NCW Act, 1990

Statutory basis of the **National Commission** for Women; recommendatory in design.

Articles 338, 338A, 338B

Constitutional NCSC, NCST and NCBC - the nearest templates for a constitutional NCW.

Article 324

Election Commission model of a constitutional body with operational insulation.

Article 15 and 15(3)

Equality and special provision for women; the substantive hook a women's commission serves.

POSH Act, 2013 / 73rd Amendment

Other gender-justice tracks that a commission cannot replace.

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